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No. A-559
IN THE

Supreme Court of the United States

October Term, 1982

CITY OF TORRANCE,

Appellant,

vs.

WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA AND STATE COMPENSATION INSURANCE FUND,

Appellees.

On Appeal From the Supreme Court of the State of California.

BRIEF OF AMICUS CURIAE, COUNTY OF LOS ANGELES, IN SUPPORT OF THE APPELLANT.

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BRIEF OF AMICUS CURIAE, COUNTY OF LOS ANGELES, IN SUPPORT OF THE APPELLANT.

The County of Los Angeles is a political subdivision of the State of California and files this brief as *Amicus Curiae* in support of the Appellant, City of Torrance, pursuant to Rule 36.4, Rules of the Supreme Court of the United States.

Interest of *Amicus Curiae*.

The City of Torrance seeks to have reversed the decision of the Supreme Court of the State of California in *City of Torrance v. Workers' Compensation Appeals Board and State Compensation Insurance Fund*, 32 Cal.3d 371, 185 Cal.Rptr. 645 (1982). In that decision the state court held that the Contracts Clause was not violated by state legislation which relieved the City's former insurance carrier, Appellee State Compensation Insurance Fund, of its contractual re-

sponsibility to indemnify the City for its losses due to long term cumulative injuries to City employees. As admitted by the Appellee, but for the subject legislation, the State Fund would have indemnified the City for the City's losses based on the proportion the injurious exposure in the insured period bears to the total exposure which produced the injury.

The City of Torrance purchased policies of workers' compensation insurance from the State Fund until the City became legally uninsured on July 1, 1971. The County of Los Angeles had a similar relationship with the State Fund.

The County of Los Angeles is the largest political subdivision of the State of California and employs approximately 70,000 persons. Approximately 40 percent of the claims for workers' compensation benefits filed by County employees involve long term, cumulative injuries. In order to fulfill its legal obligation to provide workers' compensation benefits to its employees, the County of Los Angeles purchased policies of insurance from the State Fund from 1938 until the County became legally uninsured on July 1, 1969. In exchange for the State Fund's promise to indemnify, the County of Los Angeles paid substantial premiums. For example, from July 1, 1959 to June 30, 1969 the yearly net premiums paid to the State Fund by the County, after dividends and refunds, ran from $1,409,731.00 for the 1959-1960 contract to $8,672,305.00 in the 1968-1969 contract year. In the ten year period from July 1, 1959 through June 30, 1969, the State Fund charged the County $48,-843,682.00, net, for undertaking the County's workers' compensation liability risk.

The legislation which the City argues impairs the contractual obligations owed to it by the State Fund also impairs those obligations which were assumed by the State Fund

and were paid for by the County of Los Angeles over the course of thirty years. These are obligations which the Appellee State Fund admits it would meet but for the legislation at issue.

ARGUMENT.

I.

Contrary to the Finding of the California Supreme Court, the Language of the Insurance Contract Does Not Indicate That It Was the Intention of the Parties to Incorporate All Subsequent Changes in the Law.

The first step in the analysis of whether a state law violates the Contracts Clause is to determine whether it operates as a substantial impairment of a contractual relationship. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244, 57 L.Ed.2d 727, 736, 98 S.Ct. 2716, 2722 (1978). The issue is one of federal law and this Honorable Court is not bound by any determination made by the California Supreme Court. Its independent determination will extend to the questions of whether a contract exists, the nature of the obligations created, as well as the meaning of the state law in question, whether it impairs the contractual obligations and violates the Contracts Clause. *Coombes v. Getz*, 285 U.S. 434, 441, 76 L.Ed. 866, 871, 52 S.Ct. 435, 436 (1932).

The California Supreme Court's analysis did not go beyond the threshold question of whether an impairment of the contractual relationship existed. It is at that point that the state court came to the unsupported conclusion that the terms of the contract of insurance evidenced an agreement by the City that changes in the law subsequent to the contract would be incorporated into the agreement, including the law at issue which relieves the insurance carrier, State Fund, of its obligation to indemnify the City for its share of liability for cumulative injuries. *City of Torrance v. Workers' Compensation Appeals Board and State Compensation Insurance Fund*, 32 Cal.3d 371, 379-380, 185 Cal.Rptr. 645, 649.

The question is, could the contract be reasonably read as contemplating that the legislature might subsequently pass a statute which would absolve the State Fund of the obligation to indemnify which the City purchased? See *Continental Illinois National Bank and Trust Company of Chicago v. State of Washington*, 696 F.2d 692, 698 (C.A. 9, 1983).

The County submits that the language of the contract is not susceptible of the construction given by the California Supreme Court.

The language at issue is as follows:

> "State Compensation Insurance Fund . . . does hereby agree . . . (1) To pay promptly and directly to any person entitled thereto under the Workmen's Compensation Laws of the State of California, and as therein provided, any sums due for compensation for injuries, and for the reasonable cost of medical, surgical supplies, crutches, apparatus and artificial members; to be directly and primarily liable to employees covered by this Policy, or in the event of their death, their dependents, to pay the compensation, if any, for which the Insured is liable . . .; and the Fund shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the Insured under the provisions of the Workmen's Compensation Laws of the State of California . . ." (Appellant's Brief, Appendix, page 33.)

From this language the state court concluded:

> "Clearly the only obligation the State Fund assumed was the obligation to pay what the workers' compensation law required." (32 Cal.3d, *supra*, at 378, 185 Cal.Rptr. at 648.)

This statement contains the first error in the state court's fallacious construction of the contract. The court's statement did not go far enough to correctly state the obligation as-

sumed by the State Fund. More accurately stated, the obligation the State Fund assumed was the obligation to pay what the workers' compensation law required the *Insured, City of Torrance to pay.*

Having once erred, and essentially rewritten the promise made by the State Fund, the state court then raised the question as to whether the contract encompassed subsequent changes in the law. Without pointing out the language upon which it relied, the court concluded:

> ". . . the language of the agreements between the City and the State Fund clearly indicates that it was the intention of the parties to incorporate subsequent changes in the law."

The County of Los Angeles submits that a reading of the language of the agreements fails to reveal an expression of intent that subsequent changes in the law could alter the State Fund's obligation to indemnify the City of Torrance. There is no reasonable basis from which to draw such an inference.

It is well settled that in the construction or interpretation of language in a contract, the courts are guided by the general principle that effect is to be given to the intention of the parties as expressed in the language used. The courts may not in the name of "construction" rewrite an unambiguous agreement and thus make a new contract for the parties. *Imperial Fire Insurance Company of London, England v. County of Coos*, 151 U.S. 452, 462, 38 L.Ed. 231, 235, 14 S.Ct. 379, 381 (1894). The courts may not disregard the words used in a contract nor insert words into the agreement of which the parties have not made use. *Harrison v. Fortlage, et al.*, 161 U.S. 57, 63, 40 L.Ed. 616, 618, 16 S.Ct. 488, 489 (1896).

The California Supreme Court's construction of the contract provisions necessitates a repositioning of the parties

in their relationships. What was once the State Fund's promise to pay those benefits the City of Torrance was found obligated to pay to its employees, now, after construction of the contract, becomes the State Fund's promise to pay only that which the state legislature deems State Fund will pay, irrespective of what obligation remains with the City to its employees.

The absurdity of the construction given by the California Supreme Court is dramatized by amending the contract terms to conform to the state court's interpretation as follows:

> "State Compensation Insurance Fund . . . does hereby agree (1) To pay promptly and directly to any person entitled thereto under the Workmen's Compensation Laws . . . and as therein provided, any sum due for compensation . . .; to be directly and primarily liable . . . to pay compensation, if any, for which the ~~Insured (City)~~ *State Compensation Insurance Fund* is liable . . .; and (to) be bound by and subject to the orders, findings, decisions or awards rendered against the ~~Insured (City)~~ *State Compensation Insurance Fund* under the Workmen's Compensation Laws . . ."

The contract terms, without question, show the State Fund unequivocally promising to assume the City's obligations for workers' compensation benefits relative to the contract period. There are no terms in the contract which would evidence an anticipation that the State Fund might be relieved of its promise to indemnify. The only language cited in the state court's opinion which might support such an inference is not taken from the contract, but is found in the state court's own inadequate and erroneous paraphrasing of the State Fund's promise.

II.

Aside From the Terms of the Contract, the Fact That the Parties Could Anticipate Certain Kinds of Changes in the Law as Affecting the State Fund's Contractual Obligation Does Not Mean That the City Had No Other Legitimate Contractual Expectation but That Any Kind of Change in the Law, Including the Abrogation of the State Fund's Obligation, Would Be Incorporated Into the Agreement.

As pointed out by California Supreme Court Justice Mosk in his dissent in *City of Torrance v. Workers' Compensation Appeals Board and State Compensation Insurance Fund, supra*, 32 Cal.3d, at 383-384, 185 Cal.Rptr., at 651-652, changes in the law affecting the obligations of the City of Torrance to its employees could be anticipated because, under workers' compensation law, the relationship of employer and employee is not contractual, but is a legal status the incidents of which are subject to statutory definition. *Argonaut Mining Co. v. Industrial Accident Commission (Gonzales)*, 104 Cal.App.2d 27, 230 P.2d 637 (1951). On the other hand, the relationship of insurance carrier and insured employer is based on contract. See *Imperial Fire Insurance Company of London, England v. County of Coos*, 151 U.S. 452, 462, 38 L.Ed. 231, 235, 14 S.Ct. 379, 381 (1894).

Under the rule of the *Argonaut* case, the insurer who assumes the insured employer's obligation to its employees assumes the risk that compensation rates may be increased above the rates in effect at the time of the contract. That is so because the scope of the employer's obligation to its employees, which is not limited by contract (California Labor Code Section 5000), can be changed. This is part of the obligation of the employer which is assumed by the

insurance carrier. The anticipation of such a change is part of the data upon which the employer decides to insure or choose self-insurance and it is one of the risks upon which the insurer sets the premium and agrees to insure.

That contracting parties could anticipate *some* kind of alteration of their contractual obligations by subsequent legislation does not mean that the parties should be held to have contemplated the incorporation of *all* kinds of subsequent legislation into the contract. *Continental Illinois National Bank and Trust Company of Chicago, et al. v. State of Washington*, 696 F.2d 692, 697-698 (C.A.9, 1983).

It is reasonable to conclude that the parties must have anticipated that the rate of compensation payable to employees would change with legislative adjustments for increases in the cost of living. Insurance companies have been on notice of this fact since at least 1951 when the *Argonaut* decision was issued.

However, there was no case precedent, nor any statutory provision, that would have apprised the City of Torrance and other similarly situated employers that the promises of indemnity for which they were paying could be abrogated by subsequent legislative fiat. This was not the same kind of change which could be anticipated, by virtue of the decision in *Argonaut*, as affecting the State Fund's obligations under its contracts of insurance. Cf. *Continental Illinois National Bank and Trust Company v. State of Washington*, 696 F.2d, *supra*, at 698.

In light of the absence of any case precedent, statutory provision or express agreement to be bound by any future decision of the state legislature which might wrest from the City the benefit of its bargain, it is unreasonable to impose on the City, subsequent to its payment of premium, continued success in the legislature as a condition precedent to collection on the State Fund's promise to indemnify.

Conclusion.

When the City purchased the policies of insurance from the State Compensation Insurance Fund, it paid the State Fund to undertake the risks associated with workers' compensation liability which occurred during the period of coverage. The avoidance of risk was the very purpose the City had in entering the insurance contracts. It was unreasonable for the Supreme Court of the State of California to hold that, even though the City was paying the State Fund to assume the risk of loss, the City was, depending on the whim of the legislature, looking forward to assuming the very risk it sought thereby to avoid.

The implications of the decision of the state court are ominous. How can a contract of insurance be of value when any promisor powerful enough in the legislature may subsequently have its contractual obligations relieved by legislative fiat?

The City's contractual rights have been annihilated by the state law in question. The County of Los Angeles submits that the law in issue obviously impairs obligations under contracts. The constitutional dimensions of this impairment are fully addressed in the Appellant's Jurisdictional Statement.

It is prayed that the Appellant be granted the relief it seeks.

Respectfully submitted,

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